

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

March 11, 2014 at 9:31 A.M.

1. [13-34976](#)-B-11 CORINNE HUTTLINGER
CLH-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-4-14 [[27](#)]

ENVIRONMENTAL CPR, INC. VS.

Tentative Ruling: The motion is dismissed without prejudice.

The movant did not give sufficient notice of this motion to parties in interest. Fed. R. Bankr. P. 4001(a) requires that a motion for relief from the automatic stay in a Chapter 11 case where no committee or of unsecured creditors has been appointed pursuant to 11 U.S.C. § 1102 be served on the creditors included on the list filed pursuant to Fed. R. Bankr. P. 1007(d), i.e., the List of Creditors Holding 20 Largest Unsecured Claims (Dkt. 1 at 7). LBR 9014-1(d)(4) states that when notice of a motion is served without the motion or supporting papers, the notice of hearing shall also succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. In addition, LBR 9014-1(d)(4) requires service of the motion and its supporting papers "on those parties who have requested special notice and those who are directly affected by the requested relief."

In this case, the movant, Environmental CPR, Inc. filed two certificates of service with the motion (Dkt. 31, 32). One of the proofs of service (Dkt. 32) shows service of all of the moving papers on the debtor, the debtor's bankruptcy attorney and the United States trustee. The other proof of service (Dkt. 31) shows service of only the notice of hearing on all creditors, including the 20 largest unsecured creditors. However, the notice of hearing (Dkt. 28), while it gives a brief statement of the relief being sought by the movant, does not set forth any "essential facts necessary for a party to determine whether to oppose the motion." In addition, prior to the filing of this motion, Bank of America, N.A., holder of the first deed of trust on the real property that is the subject of this motion, filed a request for special notice on December 13, 2013 (Dkt. 8). The movant has not complied with the requirements of LBR 9014-1(d)(4), as the movant has not included necessary facts in the notice of hearing for those parties in interest who were served with only the notice of hearing and has not served Bank of America, N.A. with the moving papers. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

2. [13-34703](#)-B-7 ELLEN SPRINGER
MJ-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-4-14 [[19](#)]

CITIMORTGAGE, INC. VS.

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part and dismissed as moot in part. As to the debtor, the motion is dismissed as moot. The debtor received a discharge on February 20, 2014, and the automatic stay as to the debtor ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 4537 Terrace Downs Way, Sacramento (APN 228-0650-012) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make seven (7) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtor has filed a statement of intention to surrender the Property. The chapter 7 trustee has filed a report of no distribution.

The court will issue a minute order.

3. [14-20010](#)-B-7 ALI/KELLY AKYUZ
RMD-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-6-14 [[13](#)]

EVERBANK VS.

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as to the debtors and the estate pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 6297 Walkerton Drive, Jamesville, New York (APN 082-07-0 1.3) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees or costs. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make thirteen (13) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11

U.S.C. § 506(b).

The court will issue a minute order.

4. [13-33822](#)-B-7 VALERIE KEYS MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
1-31-14 [[16](#)]

THE BANK OF NEW YORK MELLON
VS.

Tentative Ruling: The motion is granted in part. The automatic stay is modified as to the debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 2011 Berg Avenue, Sacramento, California (APN 035-0152-002-0000) ("Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make nineteen (19) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The chapter 7 trustee has filed a report of no distribution.

The court will issue a minute order.

5. [13-34129](#)-B-7 JORGE MALDONADO MOTION FOR RELIEF FROM
MTB-1 AUTOMATIC STAY
2-3-14 [[13](#)]

PRIDE INDUSTRIES, ET AL. VS.

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is dismissed without prejudice.

The motion was not properly served. The motion suffers from the following service defects:

1.) The movant did not serve the debtor with the motion. Pursuant to Fed. R. Bankr. P. 4001(a)(1), a motion for relief from the automatic stay shall be made in accordance with Fed. R. Bankr. P. 9014. Fed. R. Bankr. P. 9014 requires service in the manner provided for service of a summons and complaint under Fed. R. Bankr. P. 7004. Fed. R. Bankr. P. 7004(g), in turn, provides that "[i]f the debtor is represented by an attorney, whenever service is made upon the debtor under the Rule, service shall also be made upon the debtor's attorney." In this case, the movant served the debtor's attorney, but did not serve the debtor himself. The rule provides that the debtor's attorney shall be served in addition to

the debtor, not as a substitute for service on the debtor.

2.) The movant did not serve the chapter 7 trustee, John Bell, with the motion. The movant's certificate of service does not show service on the chapter 7 trustee. As the movant seeks to liquidate a claim against the bankruptcy estate, the chapter 7 trustee is a necessary party to the motion.

3.) The movant did not serve the United States trustee with the motion, as required by ¶ 1.1 of the Region 17 United States trustee's guidelines.

The court will issue a minute order.

6. [14-20643](#)-B-7 DARNELL/SAMANTHA CRAWFORD MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
2-7-14 [[14](#)]

AMERICREDIT FINANCIAL
SERVICES, INC. VS.

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 2012 Chrysler 200 (VIN 1C3CCBAB2CN117705) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make approximately two (2) payments. Also, movant alleges without dispute that there is no equity in the Collateral and the Collateral is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtors have filed a statement of intention to surrender the Collateral. The chapter 7 trustee has filed a statement of non-opposition to the motion.

The court will issue a minute order.

7. [13-35752](#)-B-7 THOMAS/MARJORIE CROUCH MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
1-29-14 [[14](#)]

WELLS FARGO BANK, N.A. VS.

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as to the debtors and the estate pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at

8362 Tracy Terrace, Granite Bay, California (APN 047-300-003-000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150; these fees and costs may be enforced only against the movant's collateral. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make three (3) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

The court will issue a minute order.

8. [13-29666](#)-B-7 MICHAEL MEYER MOTION FOR RELIEF FROM
KSW-1 AUTOMATIC STAY
1-31-14 [[27](#)]
SETERUS, INC. VS.

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is removed from the calendar. The movant withdrew the motion on February 27, 2014 (Dkt. 34).

9. [13-35567](#)-B-7 THOMAS/LORI TURNBULL MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
2-7-14 [[14](#)]
DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as to the debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 6591 Leroy Ranch Road, Placerville, California (APN 327-170-38-100) ("Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees or costs. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors has failed to make fifty-four (54) mortgage payments. Movant further alleges without dispute that

there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The trustee has filed a report of no distribution.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

10. [13-35376](#)-B-7 MAEROSE FLORES

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
12-19-13 [[14](#)]

HPROF, LLC VS.

Tentative Ruling: This motion continued from February 11, 2014. Nothing new related to this matter have been filed since the continuance, the court re-issues its prior tentative ruling.

The debtor's opposition is overruled. The motion is granted in part, and the automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with an unlawful detainer action against the debtor so that it may exercise its rights under applicable non-bankruptcy law in obtaining possession of the real property located at 120 Mainsail Court, Vallejo, CA 94591 (the "Property"). Except as so ordered, the motion is denied.

Cause for the modification exists because the movant acquired title to the Property at a pre-petition non-judicial foreclosure sale. Although the movant has failed to attach a copy of the trustee's deed upon sale, it alleges without dispute that the Property was sold at a non-judicial foreclosure sale on October 23, 2013. The debtor does not dispute that the sale occurred; rather, she questions only the validity of the sale. The debtor overlooks the fact, however, that a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of claims. As stated by the Ninth Circuit Bankruptcy Appellate Panel in In re Luz Intern., Ltd., 219 B.R. 837, 842 (9th Cir. BAP 1998):

Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. See In re Johnson, 756 F.2d 738, 740 (9th Cir.), cert. denied, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.") (citation omitted); In re Ellis, 60 B.R. 432, 436 (B.A.P. 9th Cir. 1985) ("In any case, stay litigation is not the proper vehicle for determination of the nature and extent of those rights."); Grella, 42 F.3d at 33 ("[W]e find that a hearing on a motion for relief from stay is merely a summary proceeding of

limited effect, and ... a court hearing a motion for relief from stay should seek only to determine whether the party seeking relief has a colorable claim to property of the estate."); see also, 3 Collier on Bankruptcy ¶ 362.08 [6], 362-106 (15th ed. rev.1997).

The court finds that the movant has provided sufficient evidence that it has a colorable claim to the Property. The debtor's opposition is not persuasive. The court acknowledges, as set forth in the debtor's supplemental filing March 7, 2014, that the debtor believes that the nonjudicial foreclosure sale was conducted illegally and that she is the victim of fraud either by the purchaser of the Property or by her original lender. However, pursuant to the authorities cited above, the debtor's claims are in the nature of counterclaims and it is not appropriate to adjudicate her claims as to the merits of the non-judicial foreclosure sale in this proceeding. Those claims are more appropriately raised in the underlying unlawful detainer proceeding in state court. The court also acknowledges that the debtor has recently experienced a loss in her family, but that is not a legally cognizable defense to this motion; furthermore, the court has previously continued the motion on account of those circumstances, and will not grant a further continuance on that basis.

The court will issue a minute order.